

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

MISC APPLI 80 OF 2007

**OKERO GILBERT OMBACHI PRACTISING AS G.O. OMBACHI
ADVOCATES APPLICANT**

VERSUS

**COUNTY COUNCIL OF LAIKIPIA
..... RESPONDENT**

RULING

When the above matters came up for hearing before me the advocates for both parties argued the Notice of Motion dated 12th September 2007 together and consented to one ruling being prepared for both files. The applications are brought under Section 51(2) of the Advocate's Act. In respect of Miscellaneous 80 of 2007 the applicant seeks judgement to be entered for the sum of Kshs.44,364/- in respect of Miscellaneous 44 of 2007 the applicant seeks judgement to be entered for the sum of Kshs.38,692.50/-. These sums relate to taxed costs. In both cases the respondent was served with the Notice of Taxation but did not attend the taxation. Certificates of Costs were issued in both cases by the Deputy Registrar. In support of those applications the applicant's advocate drew the court's attention to the fact that the Certificates of Costs were issued and since the same had not been set aside and because there was no dispute relating to retainer the court was free to enter judgement as prayed.

The application was opposed. I will first deal with the issue raised by the respondent to the effect that the applicant ought to have sued for his costs. I beg to differ with the argument raised by the respondent in that regard. Section 51 is very clear that an application can be made for judgement to be entered where a Certificate of Costs is issued for taxed costs of an advocate. Since I hold that view I find that I am not persuaded by the authority relied upon by the respondent namely the case of Miscellaneous Application No. 1465 of 2002. The other issue I need to consider is whether the applicant is entitled to judgment as prayed. The respondent argued that judgment cannot be entered because the retainer is disputed. Section 51(2) of Advocate's Act provides that judgement cannot be entered where the retainer is disputed. In this case the respondent argued that it had instituted a suit against the applicant seeking for him to give an account of the monies delivered to him. What is interesting is that the respondent has lumped together all the matters it was represented by the applicant in his capacity as an advocate. The respondent claimed to have made various payments to the applicant. It should be noted that the matters upon which payments were made to the applicants as alleged by the respondent do not all relate to the very particular matters which were subject of the taxation. These claims relate, in the case of Miscellaneous Application No. 80 of 2007 to the respondent's instructions to the applicant to act for it against Endana Company Limited for a claim of Kshs.120,611/-. In the case No. 44 of 2007 it related to the respondent's claim against Muhotetu Farmers Company Limited for Kshs.242,340/-. The respondent did not show that the amounts claimed to have been paid to the applicant relate to these specific matters. Indeed looking at the Replying Affidavit there is no mention therein of the remuneration of the applicant in respect of those two claims. The only response that respondent made to the applicant's claim is that judgement cannot be entered because it has a claim for accounts against the applicants awaiting determination with respect and for the avoidance of doubt retainer is defined in *BLACK'S LAW DICTIONARY* as "*CLIENT'S authorization for*

a lawyer to act in a case” A fee that a client pays to a lawyer simply to be available when the client needs legal help during a specified period or a specified matter A lumpsum fee paid by the client to engage a lawyer at the outset of a matter.”

Bearing in mind that definition the respondent failed to show where its dispute of the retainer falls. Having so failed the opposition raised by the respondent is hereby rejected. Accordingly the orders of this court are as follows:-

1. Judgment be and is hereby entered in respect of MISCELLANEOUS CASE 80 of 2007 for Kshs.44,364/- in favour of the applicant as against the respondent. That amount shall attract interest from the date of judgement until payment in full.

2. Judgement be and is hereby entered in respect of MISCELLANEOUS CASE 44 of 2007 for Kshs.38,692.50/- in favour of the applicant as against the respondent. That amount shall attract interest from the date of judgement until payment in full.

3. The court grants costs of the Notice of Motion in both HC MISCELLANEOUS CASE NO. 80 OF 2007 and 44 OF 2007 dated 12th September 2007 to the applicant.

Dated and delivered at Nyeri this 3rd day of March 2008.

MARY KASANGO

JUDGE